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LETTER DATED 22 MAY 1996 FROM THE PERMANENT REPRESENTATIVES OF NAMIBIA AND THE UNITED REPUBLIC OF TANZANIA TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

We have the honour to transmit to you a memorandum by the Frente Polisario to the members of the Security Council on the question of Western Sahara (see annex) and we should be grateful if you would have it circulated as a document of the Security Council.

(Signed) Tunguru HUARAKA
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(Signed) Daudi MWAKAWAGO
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Annex

Memorandum dated May 1996 on the latest developments of the United Nations/Organization of African Unity Western Sahara peace plan by the Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro

The UN/OAU peace plan on Western Sahara will enter, in the next few weeks, into the most critical phase since its approval by the Security Council in June 1991.

The Referendum on self-determination envisaged by the United Nations in this plan, as a peaceful solution to the conflict of decolonization of Western Sahara, was delayed *sine die*, in December 1991, as a result of the Moroccan will to obstruct and change it, so as to legitimize its illegal occupation of the Sahrawi territory.

As it is known, the original peace plan was changed unilaterally when its most important clause, considering the 1974 Spanish census (conducted by Spain before its withdrawal) as the unique basis for the establishment of the electoral body for the referendum, was replaced by new criteria of voters, which permits Morocco to include in the electoral lists a Moroccan population which has been previously transferred to Western Sahara. As demonstrated by events, this radical change was a fatal blow to the perspective of a free and fair referendum in Western Sahara.

A DECISIVE REPORT: CAUSES OF A POSSIBLE FAILURE

The possibility that the Secretary-General of the United Nations , in his forthcoming report to the Security Council on May 15, 1996, will announce the failure and withdrawal of the MINURSO, is a serious and almost unavoidable eventuality.

What are the causes of this possible failure?

It is essentially due to the combination of an open Moroccan opposition to a free and fair referendum and a surprising lack of firmness shown by MINURSO in the management of the peace plan. The lack of firmness led to a situation whereby nothing can be proposed or done without the approval of the occupying power of the territory. This element of total dependency, hidden and, at times, denied by MINURSO, has emerged little by little until its existence has became crystal clear to the international public opinion.

There are immediate and remote factors which can explain the imminent failure:

1. Among the first, the categorical opposition of Morocco to the principle of transparency in the management of the peace process was a decisive factor.

As it is known, the Secretary-General, in his January 1996 report to the Security Council, decided that the MINURSO provides the two parties, Morocco and the Polisario Front, with the list of persons that have been, so far, declared by the Identification Commission as voters in the forthcoming referendum (para. 16 of the report S/1996/43).

This decision of the Secretary General was a wise and justified act. Transparency is an essential element and a basic principle of any operation of peace in the hands of the United Nations. Its non-application will lead to the raising of legitimate questions and will result in a serious blow to the credibility of the international organization in charge of a referendum operation.

The Polisario Front welcomed wholeheartedly this decision. However, Morocco categorically opposed it. This Moroccan veto paralyzed the MINURSO and confirmed the lack of independence of the United Nations in the management of the peace process. The consequences of this action are of extreme seriousness for the whole peace process, in that without transparency there can be no free and fair referendum.

This unjustified behavior of the Kingdom of Morocco is the latest in a series of obstructions which clearly attest to the fact that the occupying power refuses to accept,both now and in the future, the holding of a referendum on self-determination as a solution to the conflict of decolonization of Western Sahara.

2. Among the remote factors that have led to the imminent failure of the peace process are, as seen, the imposition of a radical change of the original peace plan in December 1991, the massive transfer of Moroccan settlers into the territory, the rejection of direct dialogue with the Polisario Front and statements of high-level Moroccan authorities declaring that they will not accept the result of a referendum in favor of independence.

These elements of information and assessment seem to show that the peace process was doomed to failure from the beginning due the UN's unwillingness to act.

Several international independent observers such as Human Rights Watch (letter addressed to the UN Security Council on September 19, 1995) have concluded that Morocco "has manipulated the operation of the referendum". In this regard, the former number two of the MINURSO, US Ambassador **Frank Ruddy**, has come to the same conclusions, which he stated in a hearing before the US Congress in January 1995. It could also be for this reason that he was prevented from giving a testimony before the Fourth Committee of the UN General Assembly in October 1995. On the other hand, newspapers such as *The New York Times*, (March 5, 1995) noticed that "few are those who believe that Morocco will give up Western Sahara, regardless of the outcome of any referendum".

THE IDENTIFICATION OF VOTERS: THE BEGINNING OF THE END

In any referendum, particularly one of decolonization, the electoral body is the most important element, along with the circumstances and conditions surrounding such a vote.

I. The Polisario Front, in a spirit of cooperation with the United Nations during the negotiations which led to the elaboration of the peace plan, accepted that Morocco kept 65,000 troops, in addition to its administration and settlers,during the transitional period. The UN mediators assured the Polisario Front that, in order to counteract these factors of military and administrative pressure, it was of utmost importance to have faith and confidence in the moral and political authority of the United Nations.

In the meantime, an unequivocal agreement on the question regarding the electoral body was reached. It stipulates that "All Sahrawis 18-years- old or more, that are included in the 1974 Spanish census will have the right to vote". Such a census registered a population of about 75,000 persons. This agreement was in fact what permitted the elaboration of the plan and the establishment of the MINURSO.

II. Once the implementation of the plan was initiated, and after the cease-fire came into force on September 6, 1991, and a date for the 92 referendum scheduled , Morocco reneged on its commitment and began transferring waves of thousands of its own citizens into the territory, in order to include them in the voters lists.

The United Nations opted for silence in the face of this violation of the peace plan, which was, among other things, what led to the resignation of the then Special Representative of the Secretary-General, Swiss Ambassador Johannes Manz. Four months later, on December 19, 1991, Morocco imposed on the UN a criteria of eligibility aimed at allowing newly transferred Moroccan population to vote.

Since then, the door has been left open for a plebiscite whose electoral body was compiled according to the desire of the Kingdom of Morocco. The submission by the Moroccan authorities of 181,000 applications to the identification commission of MINURSO was only the numerical expression of a premeditated fraud (see appendix).

III. After almost two years of work, carried out in dubious circumstances imposed by Morocco, the identification commission was only able to examine the applications of 60,000 people, from a total of 242,000, of which some 181,000,as seen, were forwarded by the Moroccan authorities as so called Sahrawis .

The applications presented by Morocco do not meet with the conditions required by the original peace plan nor those contained in the so called "proposals of compromise" of the current Secretary General, presented in June 1993, specifically that the applicant must prove that "he/she belongs to a Sahrawi sub-fraction included in the 1974 Spanish census".

During all this time, it has been demonstrated that the Moroccan authorities have been engaged in a strategy of large-scale fraud culminating in Morocco's adamant refusal to allow the identification Commission to publish and give to the two parties the specific result of its work during the first phase of voters' identification.

The Moroccan opposition to transparency shows that it seeks to impose a procedure that is incompatible with a free and fair referendum and contrary to the wishes of the international community.

PERSPECTIVES

The original peace plan, which went into crisis in December 1991 due to Morocco's deviation from its objective,was also characterized by serious ambiguities from the start which were never clarified despite the repeated requests of the Polisario Front.

Among these ambiguities is the code of conduct which governs the electoral campaign, the confinement of troops, the presence of international observers and reporters and, above all, the mechanisms required to guarantee the respect of the final outcome of the referendum.

The elements mentioned in the above paragraphs point to the reasons that the peace process in Western Sahara took a road which will unfortunately lead to its ultimate failure.

The Polisario Front had trusted that the UN's moral and political authority, deriving from its responsibility in the decolonization of Western Sahara, would stand up to the Moroccan challenge. This confidence was translated into an attitude of great flexibility during the elaboration of the peace plan as well as during the continuous efforts to save it from the various deviations that occurred since its violation in 1991.

The challenge and obstinacy with which Morocco continued "to manipulate the operation" (Human Rights Watch) reached a scandalous point when it opposed the publication of the list of voters already identified.

Furthermore, both the unjustified rejection by the Moroccan government of a direct dialogue with the Polisario - which could facilitate the implementation of the peace plan- and Morocco's proclaimed intention not to respect any referendum that do not guarantee beforehand a result favorable to its interests are factors that demonstrate that there is indeed a party which is responsible for the failure of the peace plan.

The United Nations either did not want or was unable to respond firmly to the Moroccan abuses. Instead, its *laissez-faire attitude* allowed Morocco to do as it wished.

Thus, the UN's inability to organize a free and fair referendum and the inconsistency of its implication in the fraud, as wished by Morocco, are the indications of the organization's

failure.

As reported by the international media, the United Nations is preparing the announcement of the end of its mission for the referendum in Western Sahara (MINURSO). The likelihood of this announcement will come just after independent observers have stated that "serious human rights violations have continued to be committed by the Moroccan security forces in Western Sahara, in violation of international human rights treaties ratified by Morocco and despite the presence since 1991 of the United Nations Mission for the referendum in Western Sahara, MINURSO" (Amnesty International, 18 April, 1996, MDE 29/04/96).

It is difficult to argue that this failure is due to a lack of finances or of cooperation of the two parties. All of the UN member states, and particularly those in the Security Council, are well aware of the real reasons of what could become the most famous failure of the United Nations. The reason is crystal clear: the lack of firmness on the part of the UN in the face of the intransigence of Morocco.

A partial withdrawal of the MINURSO that will leave in place only the military component is not only a symbol of a failure, which could and should have been prevented, but it also reflects the extent to which the United Nations is held prisoner to Morocco's wishes.

Up to now, the MINURSO military contingent has had the responsibility, in conformity with the peace plan, to monitor the cease-fire, which is the first step in the referendum process.

Once it is realized that it is impossible to hold a free and fair referendum, the maintaining of the cease-fire without a prospective referendum will only serve to give an international blessing to the illegal occupation of the territory. This goes against the UN's commitment to decolonization.

An alternative option, which does not take into consideration the colonial nature of the problem and does not count on the support of both parties, is neither realistic nor advisable. Furthermore, it would implicate both the United Nations and the Security Council in an unilateral approach, again contrary to the principles contained in the UN Charter.

The Polisario Front considers that Morocco's attitude not only prevents the continuation of the peace process in a transparent and credible way but it could also lead to the end of the process and, therefore, to a major crisis.

The Saharawi people do not desire war and will continue to undertake all possible efforts to secure a peaceful and just solution to the conflict for a lasting decolonization of Western Sahara. However, the Saharawi people will spare no efforts, if need be, to defend their right to self-determination and independence.

The international community has a responsibility to bring the process to its completion, in order to prevent a regional crisis of dangerous and unpredictable proportions. In this regard,

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a decisive action should take into account the following:

1. The decolonization nature of the problem. The occupying power must respect the right to self-determination of the Sahrawi people and renounce to its attempts to substitute this people with a Moroccan population.

2. The identification process of voters may be resumed, provided that the process is ruled by transparency. Transparency is the main guarantee for credibility. Morocco fears this sacred principle but the UN should not.

3. An appeal to the two parties in the conflict to start direct negotiations under the auspices of the United Nations, in order to resolve the outstanding problems. The negotiations would facilitate the task of both the UN and OAU to implement the settlement plan in a transparent manner.

Appendix

I. Within the Settlement Plan (Report S/21360 of June 18,1990) it is indicated with regard to the identification:

-Para.25:
"In order to facilitate the counting in a census of the Saharawis, the Secretary-General will establish, in consultation with the President of the OAU, an Identification Commission to review carefully and scrupulously the 1974 Spanish census and to update it".

-Para.27:
"The role of the Identification Commission of the Saharawis is to:

a) Examine carefully the census conducted by the Spanish authorities in the Territory in 1974 and to update it.

b) To proceed to the counting of the real Saharawi population growth during the period from the date of the census above-mentioned to the date of the organization of the referendum taking into account the following elements:

i) Birth and death
ii) Displacement of the saharawi populations."

II. From the coming into force of the cease-fire, on September 1991, Morocco started, in violation of the terms of paragraphs 71 and 72 of the Settlement Plan, the transfer of dozens of thousands of Moroccans citizens into Western Sahara in order to include them in the identification process.
Despite this new *fait accompli*, the UN Secretary-General, Mr. Perez de Cuellar, enacted new criteria of eligibility (in his Report S/23299 of December 19, 1991) that ignored the framework defined by the Settlement Plan itself.

These new criteria are five:

1) Persons who are counted in the revised list of 1974 census;
2) Persons who resided in the Territory as member of a Sahrawi tribe at the time of the 1974 census,but have not been counted in the census;
3) Members of immediate families of these two first groups (father, mother and children);
4) Persons of Sahrawi father born in the Territory;
5) Persons, members of Sahrawis tribes belonging to the Territory, who have resided 6 consecutive years or an intermittent time cumulative of total of 12 years before December 1, 1974.

For the implementation of these criteria, the Secretary-General Report S/23299 made it clear in paragraph 21 that: "The Commission will, above all, have in mind, that in order to carry a practical identification, it is the belonging of a person to a familial group (sub-fraction of a tribe) belonging to the Territory which will prevail to determine the right to participate un the referendum".

The Report of December 1991 was a clear violation of the original peace plan and a obvious alignment on the Morocco's desires.

While the operation of identification should have dealt only with 74,902 persons counted in 1974 census and few hundreds persons that have reached 18 years-old at the time of the referendum (Feb.1992), the new criteria (mainly number 4 and 5) opened the door wide for the identification of dozens of thousands of new persons coming from Morocco. The Moroccan authorities claimed that these people are of "Sahrawi origins" and that they can "prove"it by a sheikh's oral testimony. Be; but who are the sheikhs? Who are the sub-fractions belonging to the Territory?

III. The period from December 1991 to June 1993 was reserved to the interpretation of the criteria. This exercise led to the so-called "Secretary-General compromise proposal" (Report S/26185 of July 28, 1993).

In this text, the Secretary-General, while reaffirming the five criteria, indicated:

a) A sub-fraction belonging to the Territory is **"a sub-fraction included in the Spanish census"**. This interpretation came from a Moroccan official document. However, the belonging of any applicant to a sub-fraction included in the 1974 census is a precondition for its identification.

b) With regard to the proofs:

"For an exceptional case, in the case where the interested person does not have any document or possesses incomplete or insufficient Spanish documents, the Identification Commission could judge for his or her eligibility to vote in taking into account the testimony of the Chiefs of tribes."

c) Regarding the Chioukhs: **"Only the Chioukhs of sub-fractions included in the 1974 Spanish census will be eligible to testify before the Identification Commission"...**

IV. Despite the reservations publicly expressed, the Polisario Front accepted to cooperate on the basis of the compromise presented by the Secretary-General. The Identification Commission started its work in August 1994 and, since then to December 1995, it has been able to identify some 62,000 persons (40,000 in the occupied territories and 22,000 in the Sahrawi refugee camps). Since then, the operation has been halted.

At this stage it is necessary to notice the following data:

a) The 1974 Spanish census classifies the tribes on an alphabetical order basis. (A, B, C, D, E, F, G, H, I, J).

The first seven tribes (A to G) are subdivided into subfractions (A11 to A62; B11 to B81; C11 to C35; D11 to D22; E11 to E21; F11 to F51; G11 to G61).

However, the tribes H, I, and J are not classified into subfractions, which makes impossible their identification through the compromise of the Secretary-General. For instance, H41, H61 and J51-52 are groups of tribes (H41 are an undetermined number of tribes, H61 more than 17 tribes, and J51-52 close to 62 tribes). Once more, the problem of subfractions and Chioukhs is raised.

b) The number of persons that have already submitted applications is 242,000. The number of persons counted in the 1974 census, and still alive, is 61,000. It must be pointed out that the different census carried out by the colonial Spanish authorities in the Territory throughout more than one century disclosed the following numbers:

-24,563 inhabitants in 1955
-33,439 in 1963-
-37,500 in 1964
-54,178 in 1965
-59,777 in 1970
-74,902 in 1974

c) Morocco has presented 181,000 applications out of 242,000. From that amount, 100,000 still live in Morocco. Based on Morocco´s claims, these so-called Sahrawis were expelled by the Spanish authorities during their colonial rule in the then Spanish Sahara. On these grounds it seems unexplainable why all these supposedly Saharawis have not yet returned to their motherland after the withdrawal of the Spaniards from the territory, and subsequently to Morocco´s annexation.

Furthermore, 110,000 Moroccan applications come from tribes or groups of tribes H, I, and J. It is necessary to recall that the total number of persons from these tribes which were counted in the Spanish census are around 8,000 (14% of the census). They now have come to representing 45% of all applicants, which surpasses any logical updating of the Spanish census. This strange situation applies also to the group H61, which originally had 536 persons counted in the Spanish census. This same group has now submitted 56,000 applicants, among which 46,000 are still living in Morocco.

d) The proposal of compromise presented by both the acting Special Representative and the Secretary-General regarding the identification of certain contested groups (H41, H61, J51-52) on the basis of "a document published by the

competent authorities within the international recognized borders of the territory before 1974" (letter to the Security Council S/1995/924) has been rejected by Morocco.

V. From the above, it appears that Morocco was seeking the support of the international community in its intention to divert the process from its original objective (the Western Sahara people's self- determination) to a simple plebiscite for Moroccan citizens..

Morocco, which originally committed itself to the above-mentioned principle, later abandoned it and, even worse, used a veto to prevent the United Nations from carrying on with the identification process in a transparent and fair way, as stipulated by the Secretary-General in paragraph 16 of his January 1996 report (S/1996/43): "It has been decided that the Commission will take its disposition to share with the two parties, in an appropriate form, the list of applicants identified so far as voters, as well as the list of applicants still to be identified."

Explanatory table for applications for participation in the referendum

	Total	Western Sahara (occupied areas)	Sahrawis in the liberated areas and refugee camps	Morocco	Mauritania	Increase in comparison with the 1974 census
Total number of applicants	242 000	85 140	42 300	98 371	16 189	
Number of whom included in the 1974 census	61 000	28 000	27 000	1 000	5 000	181 000 (296.72%)
Applicants in the subfractions of tribes A, B, C, D, E, F and G	131 738	47 754	38 252	37 869	7 863	
Number of whom included in the 1974 census	53 100	22 800	25 700	580	4 020	78 638 (148.07%)
Applicants among groups of tribes H41, H61 and J51 and 52	76 472	17 786	1 706	53 590	3 390	
Number of whom included in the 1974 census	2 200	1 200	200	50	750	74 272 (2 921.45%)
Applicants among other tribes H, I and J	43 790	19 600	2 342	16 912	4 936	
Number of whom included in the 1974 census	5 708	4 000	1 100	378	230	38 082 (668.38%)